

REMARKS

This responds to the office action issued on July 6, 2010. Claims 25, 33 and 41 are amended. Reconsideration is respectfully requested in view of these amendments and the following remarks.

Claim Rejections – 35 U.S.C. § 103

Independent Claims 25 and 33

Independent claims 25 and 33 are rejected under 35 U.S.C. §103 over the combination of Kraft (U.S. 2002/0107009) and Cook (U.S. 6,434,407). The Applicant respectfully disagrees with these rejections. Nonetheless, claims 25 and 33 have been amended to further distinguish from the cited references.

Independent claim 25 recites a “safe volume profile providing a default volume setting...selected to reduce the risk of damage to a user’s hearing if the mobile device is operated in close proximity to the user’s ear while in the handsfree mode of operation.” A similar limitation is included in independent claim 33. The clarify the intended meaning of these claims and to further distinguish from the cited references, claims 25 and 33 have been amended to specify that the handsfree mode of operation is for use while holding the mobile device away from the user’s ear. In addition, the claims have been further amended to clarify that the safe volume profile is used in order to protect the hearing of the mobile device user in case the mobile device is still held in close proximity to the user’s ear when the mobile device transitions from the handset mode of operation to the handsfree mode of operation. The Applicant submits that nothing similar to this is disclosed or suggested by the cited references, either alone or in combination.

In the Office Action, the Examiner proposes that the claimed safe volume profile is obvious because Kraft discloses a “hands-free” volume setting for a speaker and also discloses that a headset may be worn during a hands-free mode. With regard to Kraft’s disclosure of a headset, the

Applicant submits that the amendment to claims 25 and 33, specifying that the handsfree mode is a mode in which the mobile device is held away from the user's head (i.e., a speakerphone mode), clearly distinguishes the claims from Kraft's brief mention of a headset mode. Further, as explained in detail in past office action responses, the Office Action's reliance on Kraft's headset mode is improper in any case because Kraft makes no suggestion regarding the use of a safe volume profile with the headset mode.

In addition to relying on Kraft's mention of a headset mode, the Office Action further concludes that "[s]ince the user with hands-free mode of operation may set the volume setting appropriately as desired with default status, it would have been obvious that by common sense the volume set by the user could have been a safe volume setting so that the user's ears would be less likely being [sic] damaged." As explained previously, the Examiner's reliance on an unsupported assertion of "common sense" is clearly improper. *See, Perfect Web Techs. Inc. v. InfoUSA, Inc.*, 587 F.3d 1324 (Fed. Cir. 2009)(when "common sense" is relied upon as a basis for a conclusion of obviousness, it must be explained with "sufficient reasoning"); *In re Lee*, 61 USPQ2d 1430, 1435 (Fed. Cir. 2002)("Common knowledge" and "common sense" can be used to evaluate evidence in the record, but they are not themselves evidence). Further, the Applicant respectfully submits that limiting the volume of a mobile device to a safe volume threshold when the device is switched to a handsfree mode of operation is not a matter of common sense. Quite the contrary, the instant application recognizes and addresses a potential danger with the typical handsfree mode (i.e., speakerphone mode) of a mobile phone, which is clearly not recognized by any of the cited references. Typically, when a mobile phone is switched from a regular operating mode (where the speaker is held to the user's ear) into a hands-free mode (i.e., a speakerphone mode), the volume of the phone increases substantially so that the user can hear the ongoing phone call through the loudspeaker. Significantly, this is exactly what Kraft teaches by specifying that the sound level for its "hands free" mode should be preset to the **highest** volume level (level 5 in Table 2, which is

identified in Table 1 as the highest volume level in the “sound volume” category). The Applicant has recognized, however, that this poses a potential danger to the mobile phone user when the user first switches the phone into handsfree mode because, in some instances, the user might still be holding the phone near his or her ear. Therefore, instead of immediately increasing the volume to its highest setting when entering handsfree mode, as suggested by Kraft, the instant application teaches that the volume should first be limited to a default “safe volume profile” to protect the user in the event that the phone is still near his or her ear. Clearly, nothing similar to this is suggested by the cited references, and the Examiner’s reliance in “common sense” is both improper and factually inaccurate.

For at least these reasons, the Applicant respectfully submits that independent claims 25 and 33, along with their respective dependent claims, are patentable over the cited references and in condition for allowance.

Independent Claim 41

Independent claim 41 is rejected under 35 U.S.C. § 103(a) as being obvious over Kraft. The Applicant respectfully disagrees for the reasons explained in previous office action responses. Nonetheless, claim 41 has also been amended to further distinguish from the cited Kraft reference.

In claim 41, similar to claims 25 and 33, when the mobile device is initially switched to handsfree mode, the mobile device initially limits the volume to a preset initial level. After the volume has been initiated at the preset initial level, the user can raise the volume to a level higher than the preset initial level. Claim 41 has been amended to specify that the volume is initially limited when the mobile device is switched from the handset mode to the handsfree mode and that the reason for this is to protect the hearing of the mobile device user in case the mobile device is still held in close proximity to the user’s ear when the mobile device transitions from the handset mode to the handsfree mode.

In rejecting claim 41, the office action cites to Kraft's Table 1, along with paragraphs 0015, 0020, 0022 and 0035-0037. However, as explained above and in previous office action responses, Kraft's Table 1 identifies five possible sound volume settings (level 1 – level 5) and Table 2 specifies that the *highest* possible setting (level 5) is used for the hands-free mode while driving. Therefore, Kraft teaches initiating the volume in hands-free mode at the highest setting when switched to a handsfree mode, not initially limiting the volume, as claimed. As explained above, this is precisely the thing that the method recited in amended claim 41 protects against.


For at least these reasons, the Applicant respectfully submits that independent claims 41, along with its dependent claims, are patentable over the cited references and in condition for allowance.

Conclusion

For at least the above reasons, the Applicant respectfully submits that the pending claims are patentable over the cited references and are in condition for allowance.

Respectfully submitted,

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